BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHRISTOPHER L. CASTLEMAN	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,040,867
STATE OF KANSAS	)	
Respondent	)	
AND	)	
	)	
STATE SELF-INSURANCE FUND	)	
Insurance Fund	)	

ORDER

Respondent and its insurance fund (respondent) appealed the August 26, 2008, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

This is a claim for medical expense claimant incurred in January 2007 after an inconclusive tuberculosis (TB) test. In the August 26, 2008, Order, Judge Clark ordered respondent to pay the outstanding medical expense as authorized medical benefits.

Respondent contends Judge Clark erred and, therefore, this claim should be denied. First, respondent argues claimant did not sustain an injury that is compensable under the Workers Compensation Act as he had an allergic reaction, which neither harmed nor injured his body. Respondent argues claimant required no medical treatment as there was no injury. Next, it argues it is not responsible for claimant's medical expenses as respondent's Occupational Exposure Control Plan places that responsibility on claimant and, therefore, that is a condition of claimant's employment. Finally, respondent argues claimant failed to provide timely written claim.

Conversely, claimant contends the Order should be affirmed. Claimant argues the Kansas Court of Appeals in *Casey*[1] determined an allergic reaction was either a personal

[1] *Casey v. Dillon Companies, Inc.*, 34 Kan. App. 2d 66, 114 P.3d 182, *rev. denied* 280 Kan. 981 (2005).

injury or an occupational disease. Claimant also argues he satisfied the requirement of timely written claim by submitting and resubmitting a set of medical bills to respondent with the intent that they be paid under workers compensation.

The issues before the Board on this appeal are:

1. Did claimant's allergic reaction to the TB serum comprise an accident arising out of and in the course of his employment with respondent?

2. If so, did claimant provide respondent with timely written claim for workers compensation benefits?

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member finds:

Claimant began working for respondent in 2003. As a corrections officer at the El Dorado Correctional Facility claimant is required to undergo an annual test for tuberculosis (TB). And should he test positive, claimant must follow up with his physician for a chest x-ray to rule out the disease. Such are the terms of respondent's Occupational Exposure Control Plan. Moreover, the Occupational Exposure Control Plan indicates respondent is not responsible for providing the required chest x-ray and physician follow-up care.

On or about January 9, 2007, claimant underwent his annual TB test at work and shortly afterwards developed a large red mass on his left arm at the site of the TB skin test. Two days later respondent's infection control nurse told claimant he had experienced an allergic reaction to the serum and, therefore, his TB test was inconclusive. Accordingly, respondent required claimant to get a chest x-ray before he could return to work. After undergoing the appropriate x-rays and being evaluated at Susan B. Allen Memorial Hospital, claimant was cleared and permitted to return to work. Claimant testified he told the hospital the tests were for "work comp,"[2] which is supported by one of the documents introduced at the hearing that indicates respondent was the guarantor of claimant's medical expenses and the secondary source for payment was claimant's health insurance carrier.

The hospital billed claimant $566 for his visit and Dr. Zarnow billed claimant $38. Claimant presented the bills to Gloria McLean, who handles the workers compensation matters in respondent's human resources department. Ms. McLean advised claimant the

[2] P.H. Trans. at 17.

bills should have been paid and that she would resubmit them. In addition, on January 11, 2007, which is the day claimant underwent his chest x-ray, he also prepared an accident report. When payment was denied under workers compensation, Ms. McLean helped claimant file them with his health insurance carrier. And when claimant's health insurance carrier denied payment, he resubmitted the bills to respondent.

At the preliminary hearing claimant introduced a bill that was created on July 24, 2007, for hospital services rendered on January 11, 2007, in the sum of $566. Noted in the remarks section of the bill is "WORK PAST EXPOSURE TUBERCULOSIS."[3] Another billing from the hospital that bears a billing date of January 16, 2007, itemizes the expenses for the chest x-rays and emergency room services utilized by claimant. In addition, the billing from Dr. Hilary Zarnow that was introduced at the preliminary hearing indicated claimant's bill was denied payment by respondent on March 20, 2007; denied by claimant's health insurance carrier on April 30, 2007; and again submitted to the State Self-Insurance Fund (respondent's insurance fund for workers compensation matters) on June 19, 2007.

CONCLUSIONS OF LAW

The Workers Compensation Act defines "accident" and "injury" as follows:

> "Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment. . . .[4]
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> "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.[5]

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[3] *Id.*, Cl. Ex. 1.

[4] K.S.A. 2006 Supp. 44-508(d).

[5] K.S.A. 2006 Supp. 44-508(e).

It is undisputed claimant's employment places him at risk of acquiring TB. It is also undisputed the required TB skin test caused an allergic reaction, which is a medical condition that would not have otherwise occurred. Finally, there is no dispute that the TB test was required as part of claimant continuing his employment with respondent or that because of claimant's allergic reaction, additional medical tests were necessary to rule out TB.

In *Casey,*[6] the Kansas Court of Appeals addressed allergic reactions. The Court stated, in part:

> The ALJ's conclusion that Casey's condition was not a work-related injury is too narrow a reading of the workers compensation statutes. The definition of the term "accident" does not limit itself to injuries caused by a manifestation of force. See K.S.A. 2004 Supp. 44-508(d). An accident can be an undesigned and unexpected event of an afflictive nature not necessarily accompanied by a manifestation of force. This interpretation, as required by the accident definition in K.S.A. 2004 Supp. 44-508(d), is necessarily "designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment."
>
> We borrow again from the language in *Berry*, 20 Kan. App. 2d at 227-230, to conclude that Casey's injuries are compensable. Whether her allergic reactions are a personal injury caused by accident or an occupational disease is an analytical exercise. They have characteristics of both but do not fit exactly into either one. Her condition was caused by repetitive trauma to her immune system over a long period of time during her employment at Dillons. Consequently, she is entitled to compensation for a work-related injury.

For purposes of being compensable under the Workers Compensation Act, there is no apparent reason to distinguish an allergic reaction that occurs suddenly from one that occurs over an extended period of time.

The undersigned finds the allergic reaction was an unexpected event that satisfies the definition of accident quoted above. Likewise, the red mass that developed comprises a lesion as used in the definition above. The undersigned finds the TB skin test was an incident of claimant's employment with respondent. Accordingly, the undersigned concludes claimant sustained personal injury by accident that arose out of and in the course of his employment with respondent.

[6] *Casey*, 34 Kan. App. 2d at 74-75.

The Workers Compensation Act provides that written claim must be served within 200 days of the accident date. K.S.A. 44-520a(a) provides in pertinent part:

> No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation . . . .

The Kansas Supreme Court has stated the purpose for written claim is to enable the employer to know about the injury in time to investigate it.[7] The same purpose or function has, of course, been ascribed to the requirement for notice found in K.S.A. 44-520.[8] Written claim is, however, one step beyond notice in that it requires an intent to ask the employer to pay compensation. In *Fitzwater*,[9] the Kansas Supreme Court described the test as follows:

> In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

Claimant's testimony is uncontradicted that he presented his medical bills to respondent for payment under workers compensation. That testimony is credible and, in addition, supported by the medical records claimant introduced at the preliminary hearing.

The undersigned finds claimant gave respondent the medical bills in question within 200 days of the January 2007 TB skin test and that claimant intended those bills be paid under workers compensation. Accordingly, the undersigned concludes claimant provided respondent with timely written claim.

In summary, the August 26, 2008, Order should be affirmed.

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[7] *Craig v. Electrolux Corporation*, 212 Kan. 75, 82, 510 P.2d 138 (1973).

[8] *Pike v. Gas Service Co.*, 223 Kan. 408, 573 P.2d 1055 (1978).

[9] *Fitzwater v. Boeing Airplane Co.*, 181 Kan. 158, 166, 309 P.2d 681 (1957).

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[10] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned affirms the August 26, 2008, Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of November, 2008.

KENTON D. WIRTH
BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Jeffery R. Brewer, Attorney for Respondent and its Insurance Fund
John D. Clark, Administrative Law Judge

[10] K.S.A. 44-534a.